

Civil Writ Petition No.790 (M/S) of 2002.

Pooran Singh and another Petitioner.

Versus

Deputy Director of Consolidation/
D.M., Hardwar and six others Respondents.
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Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner challenging the judgment and order dated 27.09.2002 passed by the Deputy Director of Consolidation, Hardwar in Civil Revisions Nos.89 of 2001, 91 of 2001 and 94 of 200. These revisions were filed by the revisionist/respondent No.3 against the appellate order dated 08.03.2001 passed by the Settlement Officer, Consolidation confirming the order of the Consolidation Officer, by which the application for amendment of her objection under Section 9-A(2) of U.P. Consolidation of Holdings Act,1953 (hereinafter referred as the Act) to establish her right on the basis of will executed by her grand father dated 14.03.1975, was rejected.

Bhagwan, father of petitioners was original tenure holder. In the year 1974 he executed a sale deed of land measuring 13 Bighas 4 Bishwas in favour of sons of Pooran Singh and Smt.Angoori wife of Babu Ram. Bhagwan died in the year 1975. After his death the names of his sons Balbir Singh, Pooran Singh, Babu Ram and Preetam Singh were recorded in the revenue record according to the provisions of Section 171 of U.P.Zamindari Abolition and Land Reforms Act, 1950 and PA-11 was issued on 25.01.1976. Balbir Singh also died after the death of Bhagwan within a short span of time. Thereafter the daughter of Balbir Singh, Sushma-respondent No.3, filed an application for mutation of her name and the proceedings were going on. During the pendency of the application, according to the facts recorded by the Deputy Director, Consolidation, Sushma-respondent No.3 found a will in the documents

of her mother which is alleged to have executed on 14.3.1975 by Bhagwan bequeathing his entire property to Sushma. On receipt of this will, Sushma sought amendment in her application under Section 9-A(2) of the Act, claiming her title on the basis of will. It is this application which was rejected by the Consolidation Officer as well as by the Settlement Officer, Consolidation against which the revision was allowed by the impugned order by the Deputy Director, Consolidation.

Preetam Singh filed objection to the application moved by the revisionist/respondent No.3-Sushma, under Section 9-A(2) of U.P. Consolidation of Holdings Act but no issues were framed. When Sushma got the will of Bhagwan in her favour, moved application on 30.09.1999. The objection was filed by the petitioners. The main objection taken by the petitioners before the Consolidation authorities was that if the amendment allowed the nature of the case would be changed. In support of this argument, they cited authorities of the High Courts as well as the apex Court. The Deputy Director, Consolidation has recorded a finding that the nature of the case is not changed as the revisionist is claiming her title initially on the basis of succession, afterwards on the basis of will. Therefore, if the opposite parties have to contest the case they have full opportunity and the revisionist cannot be denied to claim her title either on the basis of succession or on the basis of will. In order to examine this finding it is necessary to examine Section 9 and Section 9-A of the Act, which reads as under:-

“9.Issue of extracts from records and statements and publication of records mentioned in Section 8 and 8-A and the issue of notices for inviting objections.-(1) Upon the preparation of the records and the statements mentioned in Sections 8 and 8-A, the Assistant Consolidation Officer shall-

- (a) correct the clerical mistakes, if any, and send, or cause to be sent, to the tenure-holders concerned and other persons interested, notices containing relevant extracts from the current

annual register and such other records as may be prescribed showing-

- (i) their rights in and liabilities in relation to the land;
 - (ii) mistakes [undisputed cases of successions] and disputes discovered under Section 8 in respect thereof;
 - (iii) specific shares of individual tenure-holders in joint holdings for the purpose of effecting partitions, where necessary, to ensure proper consolidation;
 - (iv) valuation of the plots; and
 - (v) valuation of trees, wells and other improvements for calculating compensation therefor and its apportionment amongst owners, if there be more owners than one;
- (b) publish in the unit the current *Khasra* and the current annual register, the *khasra chakbandi*, the Statement of Principles prepared under Section 8-A, and any other records that may be prescribed to show, *inter alia*, the particulars referred to in clause (a).

(2) Any person to whom a notice under sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under sub-section (1), as the case may be, file, before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or in the Statement of Principles, or the need for partition.

9-A. Disposal of Cases relating to claims to land and partition of joint holding.-(1) The Assistant Consolidation Officer shall-

- (i) where objections in respect of claims to land or partition of joint holding are filed, after hearing the parties concerned, and
- (ii) where no objections are filed after making such enquiry as he may deem necessary,

settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation.

[Provided that where the Assistant Consolidation Officer, after making such enquiry as he may deem necessary, is satisfied that a case of succession is undisputed, he shall dispose of the case on the basis of such enquiry.]

(2) All cases which are not disposed of by the Assistant Consolidation Officer under sub-section (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvements, for calculating compensation therefore, and its apportionment amongst co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

(3) The Assistant Consolidation Officer, while acting under sub-section (1) and the Consolidation Officer, while acting under sub-section (2), shall be deemed to be a Court of competent jurisdiction, anything to the contrary contained in any other law for the time being in force notwithstanding.”

Under Section 9 the objection of declaration of title is filed before the Assistant Consolidation Officer and when objection is received and case is contested, then a reference is made to the Consolidation Officer under Section 9 (A) and Settlement Officer, Consolidation after issuing notice to the parties and after allowing the parties to lead the evidence decide the question of title and for that purpose sub-section (3) of Section 9-A, the Consolidation Officer shall be deemed to be a Court of competent jurisdiction against the order passed by the Consolidation Officer, appeal is filed under Section 11 and thereafter remedy of revision is also available against the appellate order under Section 48 of the Act. Therefore, the Deputy Director, Consolidation was right in allowing the application for amendment in order to enable the revisionist to establish her right and at the same time under the provisions of the Act noticed above the petitioners have opportunity to defend their legitimate right, if any, in the proceedings. Had the amendment been rejected the appellant would have suffered irreparably as the will executed by her grand father would have been left as waste paper.

Thus, in my opinion, the Deputy Director, Consolidation rightly allowed the amendment application of the revisionist. The judgment passed by the Deputy Director, Consolidation does not suffer from any illegality or infirmity.

The writ petition is dismissed in limine.

(P.C. Verma, J.)

21.10.2002
P.Singh